

REMARKS/ARGUMENTS

Claims 1-6 and 8-70 are pending in the present application. In the Office Action mailed October 21, 2005, the Examiner rejected claims 1-69 under 35 U.S.C. § 103.

Claim 1 has been amended. Claim 7 has been cancelled. A new claim, claim 70, has been added.

Reconsideration is respectfully requested in view of the above amendments to the claims and the following remarks.

A. Rejection of Claims 1-69 under 35 U.S.C. § 103(a)

The Examiner rejected claims 1-69 under 35 U.S.C. § 103(a) based on U.S. Patent No. 6,891,838 to Petite et al. (hereinafter, "Petite") in view of U.S. Patent No. 6,236,332 to Conkright et al. (hereinafter, "Conkright"). Claim 7 has been cancelled. With respect to claims 1-6 and 8-69, this rejection is respectfully traversed.

The M.P.E.P. states that

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure.

The initial burden is on the examiner to provide some suggestion of the desirability of doing what the inventor has done. To support the conclusion that the claimed invention is directed to obvious subject matter, either the references must expressly or impliedly suggest the claimed invention or the examiner must present a convincing line of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the references.

M.P.E.P. § 2142.

Applicants respectfully submit that the claims at issue are patentably distinct from the cited references, as the Examiner has not established a *prima facie* case of obviousness. Specifically, the cited references do not teach or suggest all of the limitations in these claims, and the Examiner has not provided a suggestion or motivation to modify or combine Petite and Conkright. These missing requirements for a *prima facie* case of obviousness will be discussed separately below.

Claim 1 has been amended to recite a communications module comprising “memory...programmed to periodically contact the computer.” Support for this amendment may be found in cancelled claim 7 and Applicants’ Specification on page 14, lines 17-27. Applicants submit that neither Petite nor Conkright disclose, teach, or suggest this element.

In the Office Action, the Examiner rejected this subject matter in connection with cancelled claim 7. The Examiner asserted, “Petite in view of Conkright teaches all of the claimed limitations recited in Claim 1. Petite further teaches programmed to periodically contact the computer.” Office Action mailed October 21, 2005 (“Third Office Action”), page 5. The Examiner cited to the following portion of Petite in support of this assertion,

One or more local gateways 110a and 110b are configured and disposed to receive remote data transmissions from the various stand-alone RF transceiver/repeaters 111, integrated RF transmitters 115, or the integrated RF transceivers 113. The local gateways 110a and 110b may be configured to analyze the transmissions received, convert the transmissions into TCP/IP format and further communicate the remote data signal transmissions via WAN 130 to one or more application servers 160 or other WAN 130 interconnected computing devices. In this regard, and as will be further described below, local gateways 110a and 110b may communicate information in the form of data and control signals to remote sensor/actuators 112 and remote sensors 114 from application server 160, laptop computer 140, and workstation 150 across WAN 130.

Petite, col. 7, lines 38-52. Applicants submit that this portion of Petite does not teach or suggest “memory...programmed to periodically contact the computer,” as recited in claim 1. Rather, this portion of Petite teaches that “[t]he local gateways 110a and 110b may...further communicate the remote data signal transmissions via WAN 130 to one or more application servers 160 or other WAN 130 interconnected computing devices.” However, “communicat[ing] the remote data signal

transmissions...to one or more application servers 160” is not “periodically contact[ing] the computer,” as recited in claim 1. Rather, “communicat[ing] the remote data signal transmissions...to one or more application servers 160” discloses continuous communication, not “periodic[] contact,” as recited in claim 1.

The following portion of Petite discloses “periodic[] download[s],” “Alternatively, a customer workstation 150 or a laptop 140 associated with the WAN 130 may periodically download and review the rain gauge 913 data and may initiate an operator directed control signal.” Petite, col. 20, lines 5-8. Though this section may disclose “periodic[] download[s]” of rain gauge 913 data, this section discloses that the downloading is done by computer workstation 150 or laptop 140 rather than the communications module, as recited in claim 1. The Examiner has cited computer workstation 150 and laptop 140 as the computers recited in claim 1, not as communication modules. Additionally, Applicants respectfully submit that Petite’s computer workstation 150 or laptop 140 is not a communications module, as recited in claim 1. Therefore, Petite does not teach or suggest all the limitations of claim 1.

Likewise, Conkright does not teach or suggest all of the limitations of claim 1. The Examiner has not cited nor can Applicants find any portion of Conkright that teaches a communications module comprising “memory...programmed to periodically contact the computer,” as recited in claim 1. The only section of Conkright that discusses any sort of periodic relationship is quoted below:

During monitoring of the operating conditions of its associated electrical apparatus, the remote units 26 periodically measure the current delivered to the apparatus. If the measured current differs from the stored steady state current drain for the apparatus by more than a threshold value, the remote unit 26 detects a failure condition. Alternatively, the host computer may periodically poll each remote unit 26 to command that unit to check for the occurrence of a failure condition of the electrical apparatus associated with the polled unit.

Conkright, col. 8, lines 18-27. However, this section is referring to periodic measurements taken by remote units 26 and the periodic polling of remote units 26 by the host computer. The remote units

are not communications modules, as recited in claim 1. Likewise, the remote unites 26 are not the computers that are “periodically contact[ed],” as recited in claim 1. Consequently, Conkright does not teach or suggest a communications module comprising “memory...programmed to periodically contact the computer,” as recited in claim 1.

Therefore, because neither Petite nor Conkright disclose, teach, or suggest a communications module comprising “memory...programmed to periodically contact the computer,” as recited in claim 1, the Examiner has not provided prior art that teaches or suggests every limitation of claim 1. Consequently, the Examiner has not presented a *prima facie* case of obviousness regarding claim 1.

Applicants respectfully submit that in addition to not providing prior art that teaches all of the limitations of claim 1, the Examiner has not provided a suggestion or motivation to combine Petite and Conkright. Claim 1 recites “a paging module...for communicating with a computer through a paging network” and “a modem...for communicating with the computer through a communications network.” Claims 25, 43, and 59 recite “a paging module...for receiving pager communications from the computer through [a] paging network” and “a modem...for communicating with the computer through [a] communications network.” Applicants respectfully submit that the Examiner has not presented a *prima facie* case of obviousness against these claims, because the Examiner has not provided a suggestion or motivation to modify or combine Petite and Conkright.

In the Office Action, the Examiner asserts that “[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to use the paging module taught in Conkright in the local gateway of Petite for the purpose of providing an alternative wireless means for remotely controlling and monitoring systems such as an HVAC system as taught by Conkright.” Third Office Action, page 3. The Examiner previously asserted that a combination of references, including Petite, would have been obvious “for the purpose of providing an alternative wireless means for remotely controlling and monitoring said HVAC system as taught by Watkins.” Office Action mailed May 18, 2005 (“Second Office Action”), page 6. Applicants submit that these assertions alone do not constitute a valid motivation to modify or combine Petite and Conkright.

The Federal Circuit has stated that “[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.” In re Dembiczak, 175 F.3d 994, 999 (Fed. Cir. 1999). Furthermore, “hindsight reconstruction [cannot be used] to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” In re Fine, 837 F.2d 1071, 1075 (Fed. Cir. 1988). As noted by the Federal Circuit in Ecolchem, Inc., v. Southern California Edison Company, 227 F.3d 1361, 1371 (Fed. Cir. 2000), “[o]ur case law makes clear that the best defense against hindsight-based obviousness analysis is the rigorous application of the requirement for a showing of a teaching or motivation to combine the prior art references. [Therefore,] when determining the patentability of a claimed invention which combines two known elements, ‘the question is whether there is something in the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination.’” Id. (quoting In re Beattie, 974 F.2d 1309, 1311-12 (Fed. Cir. 1992)). “Prior knowledge in the field of the invention must be supported by tangible teachings of reference materials, and the suggestion to combine references must not be derived by hindsight from knowledge of the invention itself.” Cardiac Pacemakers, Inc. v. St. Jude Medical, Inc., 381 F.3d 1371, 1376 (Fed. Cir. 2004).

Applicants submit that the Examiner has not provided any tangible teaching from any reference materials regarding the desirability of the combination of Petite and Conkright; rather the Examiner has merely derived his suggestion to combine Petite and Conkright from Applicants’ disclosure.

Additionally, Applicants submit that neither Petite nor Conkright provide any suggestion or motivation to modify or combine these two references. The Examiner has apparently argued that combining Petite and Conkright is motivated or suggested by “providing an alternative wireless means for remotely controlling and monitoring systems such as an HVAC system as taught by Conkright.” Third Office Action, page 3. However, the Examiner has not cited neither do Petite or Conkright disclose anything about the desirability of “an alternative wireless means.” Applicants have previously asserted throughout the prosecution of the present application that Petite does not

provide any suggestion or motivation to combine Petite with any reference that discloses a paging module to make these rejected claims obvious. In fact, the Examiner has not cited to any portion of Petite in response to this assertion.

Petite discloses that,

the data monitoring and control devices of the present invention need not be disposed in a permanent location as long as they remain within signal range of a system compatible RF communication device that subsequently is within signal range of a local gateway 110 interconnected through one or more networks to the application server 160.

Petite, col. 8, lines 33-39. However, there is no teaching or suggestion that the local gateway 110 is configured to communicate with the applications server 160 via two different types of communication networks. The vague reference to “one or more networks” certainly cannot be construed as such a teaching or suggestion. In fact, Petite discloses that “[i]n preferred embodiments of the network infrastructure, database servers in communication with the WAN store identification information related to each of the various transceivers along with appropriate codes suitable for a related application.” Petite, col. 3, lines 20-24. Although Petite discloses that it is preferable to use the WAN in the network infrastructure, Petite does not disclose the desirability or even the use of both “a paging module...for communicating with a computer through a paging network” and “a modem...for communicating with the computer through a communications network,” as recited in claims 1, 25, 43, and 59. Therefore, the Examiner has not cited, nor can Applicants find, any portion of Petite that teaches or suggests the desirability of a second form of communication. Consequently, the Examiner has not cited to any portion of Petite that provides a suggestion or motivation to combine Petite with a paging module.

The Examiner asserts that “Conkright teaches a paging module for communicating through a paging network” and that because “communication is conducted via a paging network. . .there will be a paging module.” Third Office Action, page 3. The Examiner cited to the following portion of Conkright in support of this assertion: “Computer 22 also scans and processes new commands and communicates with the remote units 26 through a wireless paging network, for example.”

Conkright, col. 4, lines 7-10. This section of Conkright only teaches one form of communication, namely a wireless paging network. In fact, Applicants cannot find any portion of Conkright that teaches any other form of communication, let alone the desirability of a second form of communication, other than a wireless paging network. Because Conkright only teaches a wireless paging network and does not teach or suggest any desirability of a second form of communication, it does not provide a motivation or suggestion to combine or modify Conkright with Petite.

In view of the foregoing, Applicants respectfully submit that independent claims 1, 25, 43, and 59 are patentably distinct from the cited references. Accordingly, Applicants respectfully request that the rejection of these claims be withdrawn.

Claims 1-6 and 8-24 depend either directly or indirectly from claim 1. Claims 26-42 depend either directly or indirectly from claim 25. Claims 44-58 depend either directly or indirectly from claim 43. Claims 60-69 depend either directly or indirectly from claim 59. Accordingly, Applicants respectfully request that the rejection of claims 1-6, 8-24, 26-42, 44-58, and 60-69 be withdrawn for at least the same reasons as those presented above in connection with claims 1, 25, 43, and 59.

Finally, with respect to new claim 70, claim 70 includes the limitation of “a first modem in electronic communication with the processor for communicating with a computer through a communications network” and “a second modem in electronic communication with the processor for communicating with the computer through the communications network.” Support for these limitations is found on page 6, lines 1-3 and page 8, lines 15-20 of Applicants’ specification.

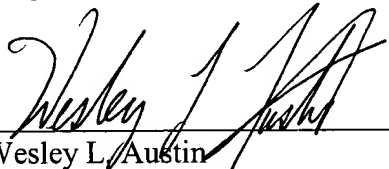
Neither Petite nor Conkright disclose, teach, or suggest the use of a first and a second modem “for communicating with the computer through the communications network,” as recited in claim 70. Accordingly, as these claim limitations are not disclosed by the prior art, this claim is immediately allowable. Favorable consideration and allowance of this claim is respectfully requested.

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Reply to Office Action of October 21, 2005

B. Conclusion

Applicants respectfully assert that all pending claims are patentably distinct from the cited references, and request that a timely Notice of Allowance be issued in this case. If there are any remaining issues preventing allowance of the pending claims that may be clarified by telephone, the Examiner is requested to call the undersigned.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Wesley L. Austin", is written over a horizontal line.

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